

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For a Hearing Pursuant to Rule)
6-74-15(c) Regarding Purchased)
Power Contract Negotiations with)
Kawaihae Cogeneration Partners)

Docket No. 7956
Amended Order No. 19968

AMENDED ORDER¹

I.

By a motion filed on July 9, 1999, KAWAIHAE COGENERATION PARTNERS (KCP) requests the commission to reopen Docket No. 7956 and to enforce the Public Utility Regulatory Act of 1978 (Motion To Reopen Docket). This motion is brought pursuant to Hawaii Administrative Rules (HAR) § 6-61-41. KCP has not requested a hearing regarding this matter; accordingly, the commission may decide this motion upon the pleadings, memoranda, and other documents filed.² On July 16, 1999, Hawaii Electric Light Company, Inc. (HELCO) filed a memorandum in opposition to KCP's Motion to Reopen Docket. On July 22, 1999, KCP filed a reply to HELCO's memorandum in opposition. The Department of Commerce and Consumer Affairs,

¹This amended order is issued to reflect non-substantive and technical changes (i.e., correct the year of the filing and ordering date from 2002 to 2003).

²See HAR § 6-61-41(g).

Division of Consumer Advocacy (Consumer Advocate) submitted its statement of position on KCP's Motion to Reopen on August 2, 1999.

PROCEDURAL HISTORY OF DOCKET

A.

On November 22, 1993, the commission opened this docket, following the filing of a complaint by KCP on October 15, 1993, alleging HELCO's failure to comply with HAR § 6-74-15(c) by its refusal to enter into a Power Purchase Agreement (PPA) with KCP. Following an evidentiary hearing and the filing of briefs by the parties,³ we issued Decision and Order No. 14030 on July 31, 1995. Decision and Order No. 14030 addressed certain issues concerning the purchase of power by HELCO from KCP and directed HELCO and KCP to continue their negotiations. Pursuant to the same decision and order, HELCO and KCP filed their respective reports on the status of their negotiations on September 29, 1995.

By Order No. 14502, filed on January 26, 1996, the commission reopened this docket to further assist HELCO and KCP in negotiating a PPA. On March 11, 1996, HELCO and KCP each filed a list of still-disputed power purchase issues and supplemental status reports. HELCO, KCP, and the

³Besides KCP and HELCO, the Consumer Advocate is a party to this docket. The Consumer Advocate informed the commission of its intent to participate in this docket by a statement filed on November 30, 1993.

Consumer Advocate subsequently met with the commission on these matters on March 27, 1996.

On December 12, 1996, KCP filed a motion for approval of its "Legally Enforceable Obligation" (1996 LEO). By Order No. 15438, filed on March 10, 1997, the commission denied (1) KCP's request for approval of what it represented to be its 1996 LEO; (2) directed HELCO and KCP to immediately resume negotiations aimed at finalizing a PPA; and (3) required KCP and HELCO to submit by April 24, 1997, either a finalized PPA or a report setting forth the specific issues preventing the finalization of a PPA, and a position statement addressing each of the disputed issues. By Order No. 15526, filed on April 17, 1997, the commission denied KCP's motion for reconsideration and clarification of Order No. 15438.

On April 24, 1997 and April 25, 1997, respectively, KCP and HELCO filed status reports and position statements. On May 1, 1997, KCP filed a motion for sanctions against HELCO alleging HELCO's failure to negotiate with KCP and provide KCP with the information necessary to finalize a PPA. On June 20, 1997, KCP filed a motion for the calculation of allowable cost. HELCO filed memoranda in opposition to KCP's motions filed on May 12, 1997, and on June 30, 1997, respectively (KCP's motions).

The commission held a hearing on August 25, 26, and 27, 1997, on the issues raised by the status reports and position statements and on KCP's motions. By Order No. 16375, filed on June 9, 1998, the commission, among other things, provided resolution and guidance on the major outstanding areas of

disagreement between HELCO and KCP, with respect to their power purchase negotiations.

By motion filed on July 9, 1998, HELCO requested the commission to partially reconsider and/or clarify Order No. 16375, with respect to the calculation of avoided working cash-generation capital. On July 14, 1998, KCP filed a memorandum in opposition to HELCO's motion. By Order No. 16432, the commission granted HELCO's motion for partial reconsideration and/or clarification of Order No. 16375.

B.

MOTION TO REOPEN DOCKET

1.

In its Motion to Reopen Docket, KCP argues that this docket should be reopened primarily because HELCO has understated its avoided costs to KCP. KCP alleges, among other things, that (1) HELCO gave a different avoided cost to Encogen; (2) HELCO intentionally hid avoided cost relating to noise; and (3) HELCO may have understated other elements of avoided costs.

HELCO, in its memorandum in opposition to KCP's Motion to Reopen Docket, asserts that such motion should be denied because: (1) KCP's Motion to Reopen Docket is essentially requesting the same type of relief already considered and addressed in previous orders (i.e., Order No. 16375); (2) HELCO and its affiliates have made numerous avoided cost calculations that have been accepted by the commission; (3) the fundamental problem with KCP's proposal is its energy

pricing formulas to HELCO (despite the fact that HELCO has repeatedly requested the information) so that HELCO can complete its recalculation of avoided costs for KCP's proposal. The Consumer Advocate, in its statement of position, requests that the commission consider issuing an order to HELCO to show cause why sanctions should not be imposed for failure to produce all relevant documents in the instant docket.⁴

2.

"It has been consistently held that rehearings before administrative bodies are addressed to their own discretion[.]" Bocalbos v. Kapiolani Medical Center, 93 Hawai'i 116, 126, 997 P.2d 42, 52 (2000) (quoting In re Kauai Electric Division of Citizens Utilities Company, 60 Haw. 166, 195, 590 P.2d 524, 543 (1978)).

In our review, we find that KCP failed to sustain its burden of showing sufficient cause for a rehearing. In particular, KCP failed to convince the commission with relevant and material evidence that its latest order, Order No. 16375, filed on June 9, 1998, and amended by

⁴Pursuant to Hawaii Revised Statutes (HRS) § 269-54, the Consumer Advocate may institute proceedings for appropriate relief before the commission including, without limitation, the imposition of sanctions or civil penalties. However, as the initiator, the proper mechanism for such relief is for the Consumer Advocate to file a petition or motion, pursuant to HRS § 269-28, rather than through its statement of position. Pursuant to Hawaii Administrative Rules 6-61-62, its statement of position is generally submitted in response to an application/petition or complaint filed with the commission.

Order No. 16432 on July 23, 1998, should be further amended due to the alleged new and necessary information. In fact, KCP's relief requested (i.e., commission's determination of avoided costs) in its Motion to Reopen was already considered and addressed in Order No. 16375. In addition, we find the merits of KCP's Motion to Reopen to be suspect, primarily because it failed to request for another evidentiary hearing to supplement the alleged new and necessary information into the docket record. Accordingly, the commission concludes that KCP's Motion to Reopen should be denied, without prejudice.

II.

THE COMMISSION ORDERS that KCP's motion to reopen Docket No. 7956 and to enforce the Public Utilities Regulatory Act of 1978 is denied, without prejudice.

DONE at Honolulu, Hawaii this 31st day of January, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

By _____
Gregg J. Kinkley, Commissioner


Kevin M. Katsura
Commission Counsel
7956.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Amended Order No. 19968 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: January 31, 2003